

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FOTOMEDIA TECHNOLOGIES, LLC,

Plaintiff,

v.

ALLTEL COMMUNICATIONS, INC., *et al.*,

Defendants.

CIVIL ACTION NO.
2:07-CV-256-TJW-CE

**DEFENDANTS' OPPOSITION
TO FOTOMEDIA'S MOTION FOR PARTIAL RECONSIDERATION
OF AND OBJECTIONS TO THE COURT'S JULY 21, 2009 MARKMAN ORDER**

Defendants Alltel Communications, Inc., Sprint Nextel Corporation, T-Mobile USA, Inc., and Cellco Partnership d/b/a Verizon Wireless (collectively, "Defendants") respectfully submit this opposition to Plaintiff FotoMedia Technologies, LLC's ("FotoMedia") Motion for Partial Reconsideration of and Objections to this Court's July 21, 2009 Markman Order (Docket Entry No. 152; the "Order"). (Docket Entry No. 157). Put simply, FotoMedia's motion raises no valid basis for reconsideration of the Order, and the challenged constructions should stand for the reasons discussed in the Order itself, and those argued in Markman briefs submitted to the Court in advance of its decision.

The portion of FotoMedia's motion which seeks reconsideration of the Order asserts no proper basis for reconsideration, and merely reargues its prior positions. Motions for reconsideration serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence. *See Texas Instruments v. Hyundai Electronics*

Ind., 50 F.Supp.2d 619, 621 (E.D. Tex. 1999). The standard for clear error to warrant reconsideration is “stringent.” *Gindes v. United States*, 740 F.2d 947, 950 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 1074 (1984)). The only “error,” cited by FotoMedia, however, is its disagreement with the Court’s decision. Motions for reconsideration “should not be used to ... re-urge matters that have already been advanced by a party.” *Texas Instruments*, 50 F.Supp.2d at 621 (*quoting Lupo v. Wyeth-Ayerst Labs.*, 4 F.Supp.2d 642, 645 (E.D.Tex. 1997)). “A motion to reconsider based on recycled arguments only serves to waste the resources of the court.” *State v. Sprint Comm. Co.*, 899 F.Supp. 282, 284 (M.D.La. 1995). Because FotoMedia has failed to present a sufficient reason for the Court to reconsider its Order, and instead only re-urges its prior arguments, FotoMedia’s motion for reconsideration must be denied.

Further, for the reasons stated in the Order, and for the reasons discussed in briefing in advance of the Order as noted below (references are to Docket Entry No. 259 in E.D. Tex. Civil Action No. 2:07-cv-00255-TJW-CE (Photobucket.Com, Inc., Shutterfly, Inc., CBS Interactive, Inc., And Yahoo! Inc.’s Responsive Brief On Claim Construction) (“Defendants’ Brief”)), the Court’s construction of the following terms should stand:

1. “a server” - see Order, pgs. 10-12; Defendants’ Brief, pgs. 2-7;
2. “identifier” - see Order, pgs. 17-18; Defendants’ Brief, pgs. 13-14;
3. “display” - see Order, pgs. 21-22; Defendants’ Brief, pgs. 18-20;
4. “request for access to the metadata” - see Order, pgs. 34-35; Defendants’ Brief, pgs. 34-35) and
5. “user’s role determined from the request” - see Order, pgs. 35-36; Defendants’ Brief, pgs. 36-37.

Dated: August 13, 2009

Respectfully submitted,

/s/ Thomas M. Dunham
(with permission, by Jennifer P. Ainsworth)

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this the 13th day of August, 2009.

/s/ Jennifer P. Ainsworth
Jennifer P. Ainsworth

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